

1952.

File No. O.L.R.C. Bom.

152

Legal Dept.

A

BRANCH

Pt. I

Subject:— Opinions under the
Bombay Land Revenue
Code 1879

(For previous correspondence
pl. see pt. I)

92/52

File No.

O.L.R.C. Bom. # 152

Pt. II

12-17

Legal Department File No. O. L. O. Res. / 5211

Sl. No.	Q.No.	Subject	Pages.
		Opinions under the Bombay Land Revenue Code, 1879.	
1.	Q.No. 12686 31-7-52	Sec. 25(1) Whether Govt. is under an obligation to help the landless to recover their dues	1-3
2.	Q.No. 2580conf 25-8-52	As Larnner Paper and Cellular Paper etc. Company may be allowed in the absence of the grantee responsible for complying with the conditions lawfully annexed to the grant no further monitoring work will be given to the company	7
3.	Q.No. 14,164 12-9-52	Re: Kolhapur Land Revenue Code Whether Shri Patil is be penalized now for having converted the use of the lands which had been granted to him in 1944.	9-11
4.	Q.No. 14995 13-9-52	Whether in the absence of an application from the landless within the statutory period there would be any legal objection to restoring the village to the landless	13
5.	Q.No. 15003 15123 A 15-9-52	Re: Land R.No. 137 and S.R.No. 1711 of the land department. It would not be possible to content contend that that Shri Rajgopal was contravened clause 6(b) of Schedule II to the agreement.	15-17
6.	Q.No. 15127 20-9-52	Provisions to the land revenue code to the landless would not be binding on the landless. How and when the payment of the portion of the land to be permitted to use the land for a non-agricultural purpose	19
7.	Q.No. 16344 6-10-52	Re: Sec. 65 When non agricultural permission under Sec. 65 already granted already granted it would not be possible to levy fine and the default must be paid	

		in the absence of any condition permitting penalty in the Collector's order	21
8	O.No. 15813 A 25-9-52	Whether survey No. 180/2 is a land following in Category (ii) i.e. land which is sh waste because of its small size or awkward shape or situation. If not falling in that category, the question of disposal of land on occupancy price to be considered as irregular.	23- 25
9	O.No. 16919A 13-10-52	Whether in merged areas the pitch of assessment is higher by more than 20 per cent than the pitch of assessment in the adjoining Bombay area relief to that extent could be granted.	27
10	O.No. 16737 A 10-10-52	Sec. 117E In respect of Settlements in the merged territories it was not necessary to issue any notification under	29
11	O.No. 1055A conf 1-10-52	Re: Gokak and Treasury Indemnity	31
12	O.No. 17668A 24-10-52	Whether the right of Shri Sabnis in respect of the tank trees standing on S.No. 157 of Benekron village had been sold so recognised by the Kolhapur State	33
13	O.No. 18702A 10-11-52	Whether the leases of Govt. lands for building etc. etc. by the Rajpipla State should be revised	35
14	O.No. 18731/A 11-11-52	Re: Acquisition of land at V-adale----- amount to be recovered from the original owners ---whether it can be recovered as arrears of land revenue	37
15	O.No. 16414A 6-10-52	Sec. 86 Bander is not an alienated village & consequently the Mamlatdar was not legally competent to pass an assistance order under	39

- 16 O.No. 19853A
27-11-52
Re: check of the tenancy
on the part of allottees
of requisitioned premises
to delay payment of
the compensation 41-43
- 17 O.No. 20202/A
2-12-52
Re Conditions —
land granted by
Govt. to Shri Nagappa
Garuphantappa Saralgi
on payment of Concessional
Orugahay piece price 45-47
- 18 O.No. 13254/Conf
2-12-52
Whether father
proceeding for
recovery from the
2 Salatia land of y---
of the misappropriated
amount can be taken
in respect of the---
attached property
of the surety--- 49
- 19 O.No. 15365A
5-11-52
Re: C.L.E. Code does
not authorize the --
recovery of all sums
due to Govt. as arrears
of land revenue. The
scope of section 187 is
rest inted to certain
sums 51-52
- 20 O.No. 5472
12-4-52
Sec. 68
Re: provision in the
Salutial for surfeit forfeiture
or revocation of the
grant for the breach of
any of the conditions
deemed to be annexed
to the terms under 53-54
- 21 O.No. 21915A
27-12-52
Whether the order of
the Collector directing
eviction is legally
in order and if not
whether it would be
feasible to take action
against the occupant
for breach of ribbon
development rules 55-57
- 22 O.No. 19365A
20-11-52
Re home advanced
by Baroda Govt to
Chakore Shri Chitbhai
Kaalshawa ----- question
as to how the dues can
be recovered from the
Chakore 59-60
- 23 O.No. 21951A
29-12-52
Sec. 86
Recovery of assessment
under---65 65
- 24 O.No. 21990 A
29-12-52
Re Collector should
be authorized to a levy
ad hoc assessment
on plot offered at
different rates according
to the classification if the
land is Jarayat. Bagayat
A --- or --- Matha 67

Legal Department.

The first question raised for consideration is whether Government is under an obligation to help the Dumaldars to recover their dues.

Section 85(1) of the Bombay Land Revenue Code provides that every superior holder of an alienated village or of an alienated share of a village in which there are a hereditary patel and a hereditary village accountant shall receive his dues on account of rent or land revenue from the inferior holders through such patel and accountant. Sub-section (2) provides that where such patel and accountant fail to recover in -- behalf of such superior holder any sum due and payable to him on account of rent or land revenue, such superior holder shall, with the previous consent of the Collector be entitled to recover his dues direct from the inferior holders. These provisions were interpreted by the -- Bombay High Court in Vishvanath Ganesh Paranjpe Vs. Giddanhu Sakharan (19 Bom. L.R. 820). It was held in that case :-

"The main purpose of section 85 is to protect the tenants. It renders it incumbent upon the superior holders to receive payments from the inferior holders through the hereditary Patel and village accountant and it entitles the superior holders to recover dues directly from the inferior holders with the previous consent of the Collector in case the hereditary patel or village accountant whose duty it is to recover the dues and to account for the same to the superior holders fails to do so. The section restricts the liberty of the superior holder to receive payments directly from the inferior holders even though the latter may be willing to pay in an alienated village in which there exists a hereditary patel and a village accountant. But when an inferior holder fails to pay the dues -- the remedy for the recovery thereof as provided by the Land Revenue Code is to be found in sections 86 and 87. There is nothing to show that it is an exclusive remedy and that it prevents parties from taking recourse to civil courts."

It is clear that there is no obligation on Government to recover dues of the Dumaldars. If there exists an obligation, it is only on the hereditary patel and hereditary accountant of the village and if they fail

to do so, the remedies open to the Dumaldars as stated above are : (1) to recover with the previous consent of the Collector, (2) to resort to sections 86 and 87 for madat or (3) to file a suit in a Civil Court.

The next question raised for consideration is whether the Dumaldars are entitled to charge water cess though they have not spent anything on the bandhara and whether the Dumaldars can recover water cess if the catchment area of water is outside their village or villages only on the ground that the river or nalla passes through their villages.

Whether the Dumaldar owns the whole village as an inam, he evidently owns the bed of the river that lies within the boundaries of the village. (Vinayakrao v. Secretary of State 23 Bombay 39). Rivers and rivulets having a perennial supply of water vest in the inamdar and it would be competent for him to charge water cess for the water taken out of such rivers or rivulets for irrigation purposes by the cultivators. The catchment area of water of such rivers or rivulets for which pass through the inam villages may be outside the village or villages of the inamdar, but so long as these rivers or rivulets are within the limits of the village or villages of the inamdar, the natural water flowing through these rivers or rivulets would vest in the inamdar and he would be entitled to claim irrigation cess for the use of water therefrom. However, the case of bandharas may be different. If the bandharas are constructed by the inamdar, from which water is supplied for irrigation, the inamdar would certainly be entitled to claim irrigation cess for the use of water. Even if such bandharas are not constructed by the inamdar, they appear to vest in him and he can charge water cess. But if these bandharas receive water through the inam a channel from outside the inamdar's village, it is possible to contest the claim of the inamdar for the water cess, for it appears that it is the original source of water which determines liability to ~~be~~

source of water which determines liability to pay cess (see Marimuthu Pillai v. Province of Madras, A.D.R. (1943) Madras 132). In Kondepati Iyer v. Secretary of State (56 Madras 696), the plaintiffs were owners of land situated in a zamindari village. The surplus waters from a Government village A flowed by distribution channels or by drainage and were stored in small ponds and depressions and then utilised by the - - - plaintiffs. The Government village A in its turn was irrigated from Government Channel which took off from a natural stream which also was maintained by the -- Government. It was pointed out that the question to be decided is not whether water belongs to Government, but whether it comes from a river or stream that -- belongs to Government. The plaintiff was accordingly held liable to pay water cess. If the source of water for the bandhara lies in a Government village, Government would be entitled to claim cess, in which case the inamdar cannot claim it. However, as pointed out by the Additional Secretary in his last opinion No. 8584. dated the 22nd May 1952, this question would now be merely of academic interest in view of the impending abolition of personal inams and the abolition of other inams by other land tenure abolition Acts already -- passed by the Legislature.

Sd/- J.R.Khurndar.

O.C.

Additional Secretary to Government

U.R. to R.D. No. 12688 dated the 31st July 1952.

K.M.P.
12/8
G.O.

It appears that some forest and revenue waste lands in Knanara were granted to Rajasahab of Mudhol under Government Resolution No. 7095/24 dated the 5th July 1934 on certain conditions, condition 3 of which was "Seventy-five per cent of the area intended for cultivation shall be brought under cultivation within a period of ten years from the date of the grant." When the irrigation project was under execution the Rajasahab died and the work could not be proceeded with for want of funds. At the request of ^{the} Darbar, Government by its Resolution No. 7095/25-4 dated the 1st July 1941 gave 7 years moratorium to the irrigation schemes of the late Raja Sahab and the Darbar was also permitted to offer for sale of the rights in the scheme subject to the condition that the prospective vendee should be approved by Government. Later on Government permitted the Rajasahab to sell his rights in the scheme to the Grantee, Karnatak Sugar and Cellulose Works, Limited, on condition that the new Company should be held strictly to the terms of the grant and no further moratorium will be given to the Company. The concession period granted under the aforesaid G.O. of 1941 expired on 31st July 1951. According to condition 3 of the Government Resolution of 1934, the Company should have brought 75 per cent of the land under cultivation which it has failed to do. The Under Secretary R.D. suggests "the Company having stepped in the shoes of the grantee is responsible for complying with the conditions lawfully annexed to the grant. In view of the breach of condition No. 3, the grant may perhaps be cancelled after show cause notice and then re-granted on the required condition with a penal clause of resumption, etc., on the representation of the Company." R.L.A. is requested to advise whether the course suggested is legally feasible.

2. Condition 3 of the conditions subject to which the lands were ~~granted~~ granted provides that 75 per cent of the area .

intended for cultivation shall be brought under cultivation within a period of 10 years from the date of the grant. The period of 10 years with the benefit of extension has already expired and 75 per cent of the area has not been brought under cultivation at all. There is, therefore, a clear breach of condition No. 3. It is true that there is no provision in any of the terms that on the breach thereof Government can resume the lands. But condition No. 3 is an essential condition annexed to the tenure of the lands and the breach thereof would entitle Government to resume possession under section 79A of the Bombay Land Revenue Code (see Additional Secretary's ~~unanimous~~ opinion No. 479 dated 14th January 1952). Besides, under section 39 of the Contract Act, the grantee is deemed to have refused to perform the contract by failing to bring under cultivation the required portion of the land. It would also be competent for Government to cancel the grant on the ground that the grantee has refused to perform an essential part of the contract.

3. There is no written agreement executed between the parties. Government has sanctioned the grant of the lands by a resolution. Consequently, the power to order resumption of the lands on the ground of breach of condition No. 3 vests in Government. It would, therefore, be competent for Government to pass the order of resumption and not for the Collector.

Sd/- P.M.Lag.
28/8

O.C.

Remembrancer of Nagal Affairs.

U.R. to R.D., No. 858 confl, dated the 28th August 1952.

K.M.P.
13/6
A.C.

Legal Department.

As would be seen from para 2 of Additional Secretary's Opinion No. 10098, dated the 17th June 1952, two grounds were relied upon for the view taken therein: that before the Bombay Land Revenue Code, 1879, was applied to the Kolhapur State by the Prime Minister's notification dated the 23rd October 1945 there was no statutory provision relating to the administration of land revenue; and secondly, even assuming that the Bombay Land Revenue Code or the Kolhapur Land Revenue Code was applied to the Ichalkaranji Jehagir, Shri Patil could not be said to be an occupant of the lands given to him in exchange. It is not understood what the Collector means when he says that Shri Patil had been in vahiast of the lands ~~Revenue Code~~ as a "regular occupant." If Shri Patil did not hold the lands as an occupant with the meaning of the Land Revenue Code, it would be absurd to hold him liable on the supposition that he was a regular occupant. In order that Shri Patil can be penalised now for having converted the use of the lands which had been granted to him in 1944 it is necessary that he should have been burdened by some provisions of law with the same liabilities as that of an occupant within the meaning of the Bombay Land Revenue Code, 1879. The Collector refers to the Karbhari's proposal that the lands should be granted subject to the condition that they would not be used for a purpose other than agricultural without previous permission; and that that proposal was approved by the Prime Minister, Kolhapur. But in the first place, these conditions were not communicated to Shri Patil when sanctioning the grant of the lands (vide the karbhari's memorandum dated the 4th July 1944, Slip 'Z'). Secondly, even if such conditions had been communicated the position in law would not have changed. There is nothing in the correspondence to suggest that the statutory liability

of an occupant had devolved on Shri-Patil when the Bombay Law came to be applied to the Kolhapur State. The view taken by the Collector of Kolhapur is wrong and no reasons exist for reconsidering the opinion already given.

Sd/- J.R. Dhuradhar.
11/9

G.S.

Additional Secretary to Government .

U.R. to R.D. No. 14916 A, dated the 12th September 1952.

K.N.P.
13/6
4.C.

Legal Department.

Section 163 of the Bombay Land Revenue Code, 1879, refers to the village or a share of a village so attached i.e. attached under section 159 of the Code for default in payment of land revenue. In this case it appears as stated by the Collector that the arrears which were due were fully realised in 1942. At that time the attachment and management were continued owing to disputes i.e. the difficulty felt by the Igandars in recovering their dues. The attachment and management after 1942, was therefore under section 144 of the Bombay Land Revenue Code and was not under section 159. Section 163 of the Bombay Land Revenue Code has therefore no application. The attachment and management were temporary. The view taken by the Revenue Department is not correct.

Sd/- J.R. Dhurndhar.
13/9

O.C.

Additional Secretary to Government.

U.R. to R.D. No. 14995/A dated the 13th September 1952.

K.M.P.
13/6
A.C.

Legal Department.

It appears that Shri Bhogilal H. Patel offered to purchase from Government ~~5~~ acres and 4 gunthas or 19, 844 square yards of land out of S.No.107-B in S.S. No. XVII of Chakala, Andheri, at the rate of 0-4-0 annas per square yard on certain conditions for factory purposes, and condition (j) ~~of~~ these conditions was :

"Should I fail to comply with any of the above conditions Government may enter into the possession of the land and ~~affixxxxxxxx~~ dispose of the property after due notice of their intention to do so and to forfeit the amount paid by me to Government." Government by their letter dated 12-7-1944 accepted the offer and thereafter Shri Bhogilal paid the price of the land and was given possession. He executed an agreement in Form HH in the Land Revenue Rules on 29th September 1944.

It is true that under clause (h) of Schedule II to the Agreement executed in form HH Shri Bhogilal has agreed to fill in the plot and erect a factory thereon within a period of three years after the building restrictions are removed. It appears that this clause has been very loosely worded. It is not indicated what those building restrictions are. Presumably ~~by~~ they contemplate the restrictions on the erection of buildings imposed under the Defence of India Rules. Although those Rules are repealed, the restrictions are still imposed under the Bombay Building (Control on Erection) Act, 1948. It appears, therefore, that the restrictions on the erection of factory buildings are still in operation and it would not be possible to contend that Shri Bhogilal has contravened clause (h) of Schedule II to the agreement.

Every occupancy which is granted under the Bombay Land Revenue Code, 1879, is transferable and heritable. (see sec. 7) There is no condition either in his original application or in the sanad executed by him that he was not entitled to transfer the land or any portion thereof. Moreover on the portion sold to ~~the~~ ¹⁸⁷⁹ Messrs. Godfrey Phillips & Co., a factory

has been actually constructed. In these circumstances it would be difficult to hold that there has been a breach of any of the conditions on which the land was granted and it would not be illegal for Government to resume the land.

Sd/- J.R.Dhurndhar.

C.C.

Additional Secretary to Government.

U.R. to R.D., No. 15123/A, dated the 15th September 1952.

K.N.P.
13/6
A.C.

OFFICE OF THE R.L.A.

It appears from para. 5 of the Collector's letter at pages 43-45 ante that a portion of S.No.293A measuring 7 acres belonged to one Uttangir Kashigir Gosavi from whom one Matulal Harkisandas purchased it in 1940. The present occupants, the Mansingka Industries purchased the land from the said Matulal in 1949. In spite of that the Sanad in respect of the ^{whole} ~~whole~~ S.No. 293A (measuring in all 13 acres - 2 1/4 gunthas) ~~was granted to Bai Manubai~~ was granted to Bai Manubai. Apparently she was not the occupant of the portion measuring 7 acres. The conditions in the Sanad granted to Bai Manubai would not be binding on the Mansingka Industries Ltd. who are the successors in title of Shri Uttangir Kashigir Gosavi in whose name the portion measuring 7 acres originally stood. It would not, therefore, be possible to take action against the Industries on the strength of the Sanad forwarded by the Collector as previously proposed. However, R.D. should pursue the point how and when the occupant of the portion measuring 7 acres came to be permitted to use the land for a non-agricultural purpose. Unless that information is furnished and unless the terms and conditions on which non-agricultural use was allowed are seen to it will not be possible to say whether the Mansingka Industries can be penalised or not. In view of the fact disclosed in para. 5 of the Collector's letter it does not appear necessary to consider the other points referred to in para. 7 of his letter.

Sd/- P.M. Mad.
19/9

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15489/A dated the 20th September 1952.

K.N.P.
13/6
A.C.

Under section 57 of the Bombay Land Revenue Code, 1879, a forfeited land can be disposed of either by sale or in accordance with the provisions of this Act or any other law for the time being in force. Section 117B provides that if any sub-division of a survey number is relinquished under section 74 or is forfeited for default in payment of land revenue, the Collector shall offer such sub-division at such price as he may consider to be worth to the occupants of the other sub-divisions of the same survey number in such order as in his discretion he may think fit; etc. In the present case Survey No. 180/2 was neither relinquished nor forfeited for default in payment of land revenue. Consequently, section 117B has no application. It appears from the Collector's letter dated the 11th December 1951 (page 33) that Survey No. 180/2 was disposed of to the holder of the adjoining Pot-Hissas 1 and 3 of the same survey number in view of the orders contained in paragraph 4(C) of Government Resolution, Revenue Department No. 366/33-XI dated the 10th March 1947, read with section 117-B of the Bombay Land Revenue Code. In paragraph 4(C) of the said Government Resolution it is stated that "land falling in Category (ii) should be disposed of in accordance with section 117-B, Land Revenue Code, if that section applies to it. In other cases also it will be best to dispose of it to occupants of adjoining land or lands." Land falling in category (ii) means land which is waste because of its small size or awkward shape or situation. If Survey No. 180/2 is of a small size or awkward shape or-situat~~ion~~ situation it would fall under category (ii) mentioned in para 4(B) of the aforesaid Government Resolution, and the disposal of the land to the adjoining owner of the Pot-Hissas 1 and 3 of the same number could be justified. However, it appears that Survey No. 180/2 measures 3 acres and ~~16 gunthas and~~ ~~is assessed at~~

16 gunthas and is assessed at Rs. 9-5-0, and it has been under cultivation since a long time. In view of these circumstances, it appears desirable that the Collector should be asked to investigate further in the matter and to report whether Survey No. 180/2 is a land falling in category (ii) i.e. land which is waste because of its small size or awkward shape or situation. If the Collector reports that the land does not fall in that category it appears that the disposal of the land to the holder of Survey No. 180/1 and 3 on payment of occupancy price will have to be considered as irregular in view of paragraph 4(D) of the aforesaid Government Resolution.

Sd/- P.M.Lad
25/9

c.c.

Remembrancer of Legal Affairs.

K.N.P.
13/6
A.C.

X Secy R.D.

X ~~12~~ 15819/A
25-9-52

OFFICE OF THE R.L.A.

By section 3 of the Bombay Merged States (Laws) Act, 1950, the Bombay Land Revenue Code, 1879, has been extended to the merged areas. The settlements of land revenue undertaken by the State Authorities before merger under the provisions of the law relating to land revenue administration will after merger and on the application of the Code be deemed to have been made and continued under the Code. In his opinion No. 14470 dated 13th December 1949 the R.L.A. has expressed the view that once a settlement is introduced it would not be competent for Government either to reduce or vary the rate of assessment in any year in the area. In the present case though the proposed relief is referred to as a remission under the implied powers of Government under section 84A of the Bombay Land Revenue Code it is not in fact a remission, but ~~same~~ a reduction of the rate of assessment. Besides ^{under} ~~under~~ the Code remissions can be granted only in special circumstances (vide Administrative Orders XXX to XLIII at pp. 93 to 101 of Gupta's Land Revenue Rules). It is the basic rate of assessment which requires to be changed. That cannot be achieved merely by executive orders. It will be necessary to undertake suitable legislation to achieve the object in view.

Sd/- P.M.Lad.
11/10

c.c.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 16919/A, dated the 13th October 1952.

K.N.P.
13/6
L.C.

Under the Administration of the Baroda State Order, 1949, the Bombay Land Revenue Code, 1879 (except Chapter I-A thereof) was made applicable to the merged territories of Baroda and to that extent the Baroda Land Revenue Code stood repealed. Thereafter under the Bombay Merged States (Laws) Act, 1950, the whole of the Bombay Land Revenue Code was extended to and brought into force in the merged territories of Baroda.

Settlements made and the periods fixed therefor under the Baroda Land Revenue Code during the Baroda regime are now solely governed by the provisions of the Bombay Land Revenue Code. The position thereof has to be interpreted in terms of the provisions of Chapter VIII-A of the Bombay Land Revenue Code, 1879.

The settlements in the Baroda territory, as stated by the Collector of Baroda were made during 1914 to 1919 i.e. prior to 1939 and as such are governed by the provisions of section 117 B of the Bombay Land Revenue Code. Section 117 E of the Code would apply only to those settlements which were made under the provisions of Chapter VIII-A after the insertion of that Chapter in the Code.

The view taken by the R.D. is, therefore correct.

Sd/- J.R.Dhurandhar

o.o.

8-10

Additional Secretary to Government

U.R. to R.D. No. 16727/A, dated 10th October 1952.

Mjr/15/6

4 Cs.

OFFICE OF THE R.L.A.

Gokak Sub-
Treasury Embezzle-
ment.

Bombay Land
Revenue Code,
Sec, 26

Under section 26 of the Bombay Land Revenue Code, it would be competent for the Collector to recover from the officer or other person serving in his Department any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act. Before the Collector can take action under this provision, it is necessary for him to determine the liability of such Officer or other person. In the present case, the Government servants who were responsible for the embezzlement of Government moneys have been prosecuted and convicted in the lower Court. They have appealed to the High Court. Pending the decision of the High Court, it would not be desirable to take any action under section 26. After the High Court has decided the appeal, the Collectory may take proceedings to determine the liability of each officer and then proceed to recover the amount from them under section 26.

Sd/- P.M.Lad.
10/10

O.C.

With case one batch
and R.D. pp. 846/E to getha
with a pkt. containing bond.

Remembrancer of Legal Affairs.
U.R. to R.D. No. 1055/Aconfl dated the 11th October
1952.

K.N.P.
13/6
4.C.

The Kolhapur Sarsubha Vat-Hukum No.13 of Fasli ¹²⁹⁶ ~~1528~~ dated the 15th September 1886 provided that in cases where no settlement judi or service commutation percentage charges are recovered in respect of inam lands, the rights of the Inamdar in respect of the reserved trees ~~standing~~ on such land shall be recognised and in other cases such rights should be refused, and the trees should be considered as of Government ownership. It is not known whether the right of Shri Satjis in respect of the teak trees standing on S.No. 157 of Benekren village had been so recognised, by the Kolhapur State. Besides the question of settling the inams in the merged States is still pending before Government and the rights of the Inamdar cannot be determined on the terms and conditions of his sanad. It will be desirable if reference in this matter is made to the Revenue Department which is dealing with the question of settling inams in merged States.

Sd/- J.R.Dhurdhar.
23/10

o.c.

Additional Secretary to Government

U.R. to ^A& W.D. No. 17668/A dated 24th October 1952.

K.N.F.
13/6
4.C.

D Point (a) in R.D. note at p. 23 ante.- The conditions on which the leases were granted by the Rajpipia State have to be treated as conditions lawfully annexed to the tenure. According to the terms of the leases, it is competent to the State Government to revise the rate of rent. The view taken by the R.D. is correct.

Point (b) in R.D. note at p. 23 ante.- The attention of the R.D. is invited to Additional Secretary's Opinion given in U.R. to R.D. No. 11749 dated 16-7-52 in which it has been held, with reference to permissions granted for non-agricultural use under Baroda Law, that it would not now be legally feasible to require the occupants to execute agreements in form M or N and that the assessment would not automatically be governed by the existing provisions of Chapter XIV of the Land Revenue Rules, 1921 and that it would be necessary to make special provisions for the purpose. The said opinion equally applies to the present case.

Sd/- J.R.Dhurndhar.
8/4

c.c.

Additional Secretary to Government

U.R. to R.D., No. 18972/A dated the 10th November 1952.

K.N.P.
13/6
4.C.

Office of the R.L.A.

It would not be legally feasible to recover the amount as an arrear of land revenue unless an agreement is taken from the owners expressly agreeing to the recovery of the defaulted instalments as arrears of land revenue.

Sd/- P.M.Lad
10/11

C.C.
Remembrancer of Legal Affairs.

U.R. to ^{PH.} E.D. No. 18731/A dated the 11th November 1952.

K.M.P.
12/6
4.C.

LEGAL DEPARTMENT.

The opinion of R.L.A. in G.R. No. 3904, dated 17th June 1882 related to an inam village and does not therefore establish the point raised by R.D. But on reconsideration I am inclined to the view that section 85 of the Bombay Land Revenue Code is an independent and special provision applicable to the superior holder of an alienated village while sections 86 and 87 are general provisions applicable to claims of all superior holders including those in unalienated villages.

To attract the provisions of section 86 it is enough that the relationship of superior holder and inferior holder existed between the parties when the alleged cause of action arose. The fact that the tenant went out of possession and ceased to be an inferior holder ~~cannot take the case out of the provision of that section.~~ cannot take the case out of the provision of that section.

sd/- J. R. Bhurmdhar.

4/10

O.C.

-e.e. Additional Secretary to Government

U.R. to R.D. No. 16444/A dated the 6th October 1952.

K.R.P.
13/6
L.C.

OFFICE OF THE L.L.A.

Bombay Land
Requisition Act,
1948.-
Compensation -
Sec. 8B(2)
Delayed payment by
Allottees -
Recovery of
interest -

Under section 8B(2) of the Bombay Land Requisition Act, 1948 power to attach terms and conditions to the allotment vests in Government. It would therefore be competent for Government to attach the following - conditions, namely (1) payment of interest on arrears of rent; and (2) liability to forfeit the whole or part of the deposit in the event of the rent being in arrears and to make up the deposit on such forfeiture.

Sd/- P.M.Lad
26/11

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 19853A 27th dated the 27th
November 1952.

K.N.P.
13/6
4.C.

Legal Department.

Bombay Land
Revenue Rules.
r. 43(2).

Condition 5 of the conditions subject to which the grant of lands was made to Shri Nagappa Gurushantappa Savalgi in 1924 provides for forfeiture of the lands in the event of non-compliance with any of the aforesaid conditions of the grant; and in continuation of the same it is further stated that "one of the 2 survey numbers 343 and 357 would be used for construction of a Dharmashala 'at my convenience' for the peer." In fact, this condition about the construction of the Dharmashala should have been inserted in the body of the agreement and the appropriate place for this would have been in either condition 2 or condition 3, the printed matter of which was scored out as being inappropriate. All the same, the insertion of this condition at the end in condition 5 would not make any material difference to the legal position as this condition would be deemed to be a vital condition condition for the breach of which the grant would be liable to forfeiture by Government. The grantee has not taken any steps to build the Dharmashala during the last 27 to 28 years and there does not appear to be any chance of his so doing it as he has left that place for good and has settled at Davangiri in Mysore State. Further, he has not even cared to reply to the notices issued by the Collector. It is true that according to the grant the grantee was permitted to build the Dharmashala at his convenience. The phrase "at his convenience" would not be equivalent at his will or pleasure. (See Iyer's Law Lexicon p. 242). So the construction of the Dharmashala can not be postponed since the. The Collector in his order dated the 5th April 1950 imposed the following additional conditions, namely:-

- (1) The construction of the Dharmashala should be completed within six months from the date of the order failing which the lands together with the structure will be liable to forfeiture

S.A.K.

14-5

4 copies

- The Collector could have called upon the grantee to construct the Dharmashala within a period of six months and prohibited him from disposing of the lands without his permission. But by his order he added these conditions to the original grant which he could not do. Consequently, this order though otherwise would have been lawful will have to be ignored as it purported to impose additional conditions which the Collector could not do. As stated above, the grantee has taken no steps during the last 27-28 years to construct the Dharmashala and there are no prospects of his constructing the Dharmashala in the near future. It would therefore, be quite competent for the Collector to issue a fresh notice to him to show cause why the lands ^{not} should be forfeited as he has failed to construct the Dharmashala within the reasonable time and, after the receipt of his reply it would be open to the Collector to forfeit the lands if he finds that the grounds urged by the grantee in his reply, if any, are ~~absent~~ ^{baseless}. However, the forfeiture of the lands would not affect the disposal of some pieces of land already done by the grantee.

28-11

U.R. to D.D., No. 20202/A, dated the 2nd December 1952.

S.A.K.
14-6
4 copies

Bombay Land
Revenue Code.
Sec. 25.

The amounts misappropriated by the two Talathis were determined by the Mahalkari and a demand was made. Thereafter the Talathis executed bonds with securities. Clearly these bonds and securities are relatable to section 25 of the Bombay Land Revenue Code. These bonds and securities can, therefore, be enforced in accordance with the terms thereof. The view taken by the District Government Pleader of Breach is not correct.

2. It is true that one Bhavsang has executed a bond for Rs. 1000/- on 4-3-1952 when a claim was made against the Talathi (Ganpatrao Chandarne). He had already executed a surety bond for Rs. 500/- on behalf of the said Talathi. But when the claim was made against the Talathi and he executed a fresh bond with securities the the previous security executed by Shri Bhavsang for Rs/- 500/- would not longer survive. Consequently, Shri Bhavsang would be liable only for Rs. 1000/- on the security bond executed by him on 4-3-1952.

84/-P.M.Led

29-11

O.C . Remembrancer of Legal Affairs.

U.R. to R.D., No. 1325/A-^G nrl . dated the 2nd December 1952.

S.A.K.
14-6 -
4 copies

Bom. Land
Revenue Code,
section 187.

Mareda Land
Acquisition
Act, section 43.

The presumption made by the Revenue Department that according to the provisions of the Land Revenue Code any money due to Government can be recovered as arrears of land revenue is not correct. Section 187 of the Bombay Land Revenue Code does not authorise the recovery of all sums due to Government as arrears of land revenue. The scope of section 187 is restricted to the following sums only:-

- (1) all sums due on account of land revenue, all quit rents, masaranas, succession duties, transfer duties, forfeitures and all cesses, profits from lands, emp. emoluments, fees, charges, penalties, fines, and costs payable or leviable under the Code or under any Act relating to land revenue;
- (2) all moneys due by any contractor for the farm of customs duties or of any other duty or tax or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of this agreement;
- (3) all sums declared by the Code or by any other Act or Regulation for the time being in force or by any contract with the Government to be leviable as an assessment or as a revenue demand or as an arrear of land revenue;

The amount in question does not fall under any of the categories specified above. Had the necessary agreement as required by section 43 of the Mareda Land Acquisition Act got executed from the Housing Society, then it would have been possible to recover the amount as an arrear of land revenue under section 187 of the Code as the sum due to Government would have been treated

as a sum declared by an Act to be leviable as an
arrear of land revenue. As no such agreement was
executed, the provisions of section 187 of the Code
would not be available, and for the recovery of the
amount the remedy would be by way of a civil suit.

2. The non-execution of an agreement would mean
want of title of the Housing Society to the land. The
Revenue Department should therefore take steps to evict
the Society unless it executes an agreement and pays the
balance of the compensation amount.

Sd/- P. .Ind

21-11

O.C. Remembrancer of Legal Affairs.

U.R. to R.D., No. 18365/A dated, 5th November 1952.

A
P.A.K.

14-6

4 copies

It does not appear that there is any inconsistency between R.L.A.'s Opinion No. 479, dated the 14th January 1952 and R.L.A.'s Opinion No. 1319-L, dated the 31st October 1938. In the latter opinion, the R.L.A., on a reference being made by the Revenue Department whether section 79A of the Bombay Land Revenue Code should be amended to make its meaning more clear, opined that it would not be competent to evict a person under this section (section 79A of the Bombay Land Revenue Code) for mere breach of any condition lawfully annexed to his tenure under the provisions of section 62, 67 or 68 unless such breach is followed by unauthorised occupation or wrongful possession. In the present case, the land was sold subject to certain conditions, one of which was that only 1/3rd portion of the land should be built over. The grantee committed a breach of this condition and built over 2/3rd of the area. On a notice being served on him to remove the additional structures within 15 days he agreed to do so but asked for two months' time. Subsequently, he represented that removal of the additional structures would involve a loss of Rs. 1000/- to him and that he should be permitted to retain them on payment of a fine. It is clear from this that the grantee himself admits that he was not entitled to build on more than 1/3rd of the land and that he could not, in law, resist the removal of the offending structures. It would, therefore, follow that this occupation of the unauthorised structures on the land was wrongful. Moreover, R.L.A.'s Opinion No. 1319-L/31st October 1938 was only intended to show the desirability of amending section 79-A to put the matter beyond doubt. In these circumstances, it appears that on facts the present case is clearly distinguishable and the R.L.A.'s Opinion of 1938 has no application to it.

Sd/- J.R. Bhurandhar.

S-4

O.O. Additional Secretary to Government.

U.R. to R.D.No. 5472, dated the 12th April 1952.

S.A.X./ 14-6/4 c.

Legal Department.

Bombay Land Revenue
Code. 1879.
Section 65.

Non-agricultural use-

The main contention of the applicant is that, as no reply was received from the Collector to his application dated 13-3-1947, he was within his rights in constructing the structure is untenable. It is true that the application was submitted to the Collector but the Collector forwarded it for disposal to the Frant Officer by his endorsement dated the 21st March 1947. The application was thereupon duly inquired into and was refused by the District Deputy Collector, Mawal Frant, by his letter No. W.S. 367/47, dated the 28th April 1947 on the definite ground that the site plan produced by the applicant showed that the applicant intended to keep 30 feet distance from the Mira-Baramati Road whereas according to Government orders it should have been 50 feet. It is clear that this reply was given with reference to the application dated the 13th March 1947 though it was not specifically so stated in the reply; and the provisions of section 65 L.R.C. were duly complied with. The contention of the applicant that he is not bound to recognise the reply from the Deputy Collector has no substance. Under section 10 of the Bombay Land Revenue Code, a Deputy Collector has all the powers of the Collector so far as regards the taluka or talukas in his charge and a reply given by the Deputy Collector is as good as that of a Collector. The first contention of the applicant is, therefore, untenable. The second contention also is without substance. The applicant is not in possession of the order of the Collector in appeal and the papers of the case are also not forthcoming. The obvious conclusion, therefore, is that the appeal has not yet been decided by the Collector. But a careful inquiry should be made on the

S.A.K.

14-6

4 copies

po nt----

delay whether the Collector has decided that the appeal and reversed the order of the Front Officer. In the absence of any such order, it may be presumed that the appeal is still pending. There is no time limit for the decision of such appeal and the fact that it is pending with the Collector will not empower the applicant to start the construction. The order of the Collector is, therefore, legal and may be allowed to stand; but the execution of the order should await the final decision of the pending appeal for which the file should be reconstructed if necessary after notice to the appellant.

Sd/-J.R.Dharandhar.

26-12

G.O. Additional Secretary to Government.

U.R. to R.D.No. 21916/A, dated the 27th December 1952.

S.A.K.
14-6
4 copies

Legal Department.

In R.L.A.'s opinion No. 16919/A dated 13th October 1952 it is stated that in order to reduce the rate of assessment on agricultural lands in the merged States, it would be necessary to undertake legislation. According to the view taken by the R.L.A. such reduction would not be remission to which administrative orders XIXto XLIII issued by the Revenue Department would apply. So far no objection can be raised to the correctness of this view. But it is added that the settlements of land undertaken by the State authorities under the provisions of the law relating to land revenue administration would after merger and on the application of the Bombay Land Revenue Code be deemed to have been made and continued under the Code. This statement is based on a passage in R.D. office note atp. 65 ante. Reference has, however, been made to another opinion of R.L.A.No. 14470, dated 13th December 1949 in which it was stated that section 117-O of the Bombay Land Revenue Code would be a bar to the reduction of the rates of assessment fixed at settlements made under the Code or deemed to have been made under it. Section 117-O of the Bombay Land Revenue Code provides that after the state Govt. has passed orders under section 117L and notice of the same has been given, the settlement shall be deemed to have been introduced. This provision further provides that the land revenue shall be levied according to such settlement. ~~[The question, therefore, for consideration is whether the land revenue shall be levied according to such settlement.]~~ The question, therefore, for consideration is whether the land revenue fixed on lands in merged States is in accordance with the settlement to which section 117-O is applicable. As stated above, R.L.A.'s view that the settlements sanctioned by the authorities of the merged States would be settlements which are deemed to have been made and continued under the Bombay Land Revenue Code is based on a statement made in R.D. office note. But it appears that the said

statement is not correct. In the first place, in the lists

attached to the Memorandum of the Settlement Commission,

the lands in the merged States ^{are} divided into four

classes: List A applies to unsurveyed and unsettled

lands and List B to lands in the case of which the periods of settlements ^{Lists C and D relate to lands in which the period of settlement have}

expired ^{are still to expire}. It is, therefore, clear that in the case of lands

in Lists A and B, there would not be any question of the

application of section 117-0 of the Bombay Land Revenue Code

in spite of the fact that assessment at the rates fixed by

a settlement under the Bombay Land Revenue Code can be

levied at the same rates even after the expiry of the

settlement. In the case of lands in Lists C and D, before

the Merged States (Laws) Act, 1950, came into force, the

Bombay Land Revenue Code was first applied to various

merged States by orders under the Extra Provincial

Jurisdiction Act. The orders under this Act were of two

kinds: (1) Administrative Orders, and (2) Application of

Laws, Order. The common provision in the various orders

is on the following lines:

"Repeal of enactments in force in Indian States." - "All enactments in force in any Indian State or part thereof and corresponding to the enactments in force in the Province of Bombay and extended to any such State under paragraph 3 shall stand repealed:

Provided that the repeal by this Order of any such enactments shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already acquired, assumed or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing;

Nor shall the repeal by this order of any enactment affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, in so far as the same respectively is not in any way inconsistent with any of the enactments extended under paragraph 3 of this order, notwithstanding that the same respectively of this order, may have been in any manner affirmed, recognised or derived by in or from any enactment hereby repealed;

Nor shall the repeal by this order of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force immediately before the date on which this order comes into force."

The above provision, while applying the Bombay Land Revenue Code to any ¹/₄ State and repealing the corresponding law in force in the State, does not provide that land revenue settlements made under laws prevailing in such States or introduced by the orders of the rulers shall be deemed to be settlements under the Bombay Land Revenue Code. These orders merely provide that anything done under such laws or orders shall be deemed to be valid. If that is so, section 117-0 ¹¹⁷⁻⁰ of the Bombay Land Revenue Code will not apply to any settlements so made or rates levied. If section 117-0 is not, therefore, a bar, the proper procedure to enable Government to reduce the rates at which land revenue is levied on lands in merged States would be to make rules under section 45 read with sections 213 and 214 of the Bombay Land Revenue Code for the purpose. Such rules would give legal validity to any action which Government proposes to take in the matter.

Sd/- J.R.Dharamdhar.

20-11

C.O. Additional Secretary to Government.

U.R. to R.D.No. 19368/A dated the 20th November 1952.

S.A.K.
15 14-6
4 copies.

Legal Department.

Bombay Land
Revenue Code
Section 86-
recovery of assessment
28 Bom. 92 and
19 B.L.R. 520)
referred to.

The Mamlatdar in his report dated 8th September 1951. has stated that in co-shared villages lands are being leased out on old tenure or new tenure by taking occupancy price of the lands through Government. If this be so, then since the lands are being leased out through Government the termination of the lease also will have to be through Government only; and it would not be competent for the inamdar to evict the tenants. Moreover the status of the tenants in all these villages i.e. both co-shared as well as inam villages appears to be that of the permanent tenants. In *Vinayak vs. Lakshman* (28 Bom. 92), Chandavarkar J. has held that the arrears of assessment are not a charge on the lands and that the inamdar in such case would be entitled only to a money decree against the occupants. The only remedy open to inamdars would be either to apply to the Collector for assistance for the recovery of rent or land revenue payable to them from their inferior holders or to file a suit in a civil court for the same (cf. *Vishwanath vs. Kondaji*; 19, B.L.R. 520). The view taken by the Revenue Department in this behalf is correct.

2. Under the proviso to section 86. of the Bombay Land Revenue Code the application for assistance must be made within the revenue year. If the application is not made within that period the inamdar will not be entitled to any assistance. In view of this position it appears that it is the inamdars who stand to lose by not accepting the rent and not the tenants. It does not therefore appear necessary for Government to collect the assessment due to inamdars in respect of co-shared villages. Moreover, it is the right of the inamdars to appoint their own talatis and collect their share of revenue; and as such it is not open to Government to interfere in the matter.

Sd/-J.R.Dhurandhar.

27/9 12

C.C. Additional Secretary to Government.
U.R. to R.D.No. 21951/A dated the 29th December 1952.

S.A.K./ 14-12-52

Office of the R.L.A.

Bombay Land Revenue
Code, 1879.
Section 52
Ad hoc assessment.

Section 52(1) of the Bombay Land Revenue Code, 1879, enacts that on all lands which are not wholly exempt from the payment of land revenue, and on which the assessment has not been fixed under the provisions of Chapter VIII-A, the assessment of the amount to be paid as land revenue shall, subject to rules made in this behalf under section 214, be fixed at the discretion of the Collector for such period not exceeding ninety-nine years as he may be authorised to prescribe, and the amounts due according to such assessment shall be levied on all such lands. The proviso to this sub-section enacts that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of such rights. As the lands in question have not been assessed under Chapter VIII-A of the Land Revenue Code, it would be possible for the Collector to take action under section 52 of the Code and to fix the assessment. The action of the Collector under section 52, L.R.C. is, however, subject to Rules made in that behalf under section 214 and it appears that no rules have been made for fixing assessment on land used for agricultural purposes by the Collector under section 52 (vide Gupta's L.R. Code, p. 317). In the circumstances, Rules will have to be framed before the Collector can take action under the section to fix the assessment as proposed.

Sd/-P.M.Lad
27-12

O.C. Remembrancer of Legal Affairs.

U.R. to R.L.No. 21990/A dated the 29th December 1952.

S.A.K./ 14-6
4 copies